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7 MCWANE, INC.

8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF NEVADA**

11 BRADLEY SUMMERS and MICHELLE
12 SUMMERS,

13 Plaintiffs,

14 v.

15 MCWANE, INC.; DOES I through XX,
16 inclusive; and ROE CORPORATIONS I through
XX, inclusive,

17 Defendants.
18

Case No. 2:15-cv-01239-JCM-GWF

**STIPULATION TO EXTEND
DISCOVERY**

(Fourth Request)

19 IT IS HEREBY STIPULATED AND AGREED, by Defendants and Plaintiffs, by and
20 through their undersigned counsel, that discovery be extended beyond the Discovery Schedule in the
21 Stipulation and Order to Extend Discovery dated July 31, 2017 (Document No. 30).

22 Per Federal Rules of Civil Procedure 16(b), and Local Rule 26-4 the following is included in
23 support of the proposed extension to the Discovery Schedule:

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A. STATEMENT SPECIFYING THE DISCOVERY THAT HAS BEEN COMPLETED

<u>Date</u>	<u>Description</u>
8/14/15	Plaintiffs' Initial FRCP 26.1 Disclosure
9/21/15	Plaintiff Bradley Summers' First Set of Interrogatories to Defendant
9/21/15	Plaintiff Bradley Summers' First Set of Requests for Production to Defendant
9/23/15	Defendant's Interrogatories to Plaintiff Bradley Summers
10/30/15	Plaintiffs' First Supplement to FRCP 26.1 Disclosure
10/31/15	Plaintiff Bradley Summers' Responses to Defendant's Interrogatories
11/10/15	Defendant's Initial FRCP 26.1 Disclosure
11/12/15	Defendant's Responses to Bradley Summers' First Set of Requests for Production to Defendant
11/12/15	Defendant's Responses to Plaintiff Bradley Summers' First Set of Interrogatories to Defendant
1/6/16	Defendant's Supplemental Responses to Bradley Summers' First Set of Requests for Production to Defendant
1/6/16	Defendant's First Supplement to FRCP 26.1 Disclosure
1/8/16	Defendant's Supplemental Responses to Plaintiff Bradley Summers' First Set of Interrogatories to Defendant
3/16/16	Plaintiffs' Second Supplement to FRCP 26.1 Disclosure
3/22/16	Defendant's Second Supplement to FRCP 26.1 Disclosure
4/4/16	Defendant's Third Supplement to FRCP 26.1 Disclosure
4/21/16	Inspection of the fire hydrant
5/17/16	Deposition of Bradley Summers
5/26/16	Deposition of Mike Anderson
6/17/16	Deposition of PMK of McWane
7/28/16	Defendant's Fourth Supplement to FRCP 26.1 Disclosure
7/29/16	Plaintiff's Second Set of Request for Production of Documents to Defendants
8/9/16	Deposition of Rex Kelsey
8/15/16	Plaintiff's Initial Expert Disclosures
8/15/16	Defendant's Initial Expert Disclosures
8/15/16	Joint Interim Status Report
8/19/16	Plaintiff's First Supplemental Expert Disclosures
9/14/16	Defendant's Supplemental Expert Disclosures
9/21/16	Deposition of Rex Kelsey
9/29/16	Deposition of Plaintiff's Frank Perez, Ph.D.
9/30/16	Deposition of Plaintiff's Expert Robert Anderson, Ph.D.
10/5/16	Deposition of Defendant's Expert David Komm, P.E.
10/10/16	Deposition of Todd French
10/11/16	Deposition of Plaintiff's Expert Sherry Latham, RN
10/11/16	Deposition of Plaintiff's Non-Retained Expert Meher Yepremyan, M.D.

1	10/12/16	Deposition of Plaintiff's Expert Marietta Nelson
2	10/12/16	Defendant's Sixth Supplement to FRCP 26.1 Disclosures
3	10/13/16	Deposition of Michelle Summers
4	10/13/16	Plaintiffs' Third Supplement to FRCP 26.1 Disclosure
5	10/14/16	Plaintiffs' Fourth Supplement to FRCP 26.1 Disclosure
6	10/24/16	Plaintiffs' Fifth Supplement to FRCP 26.1 Disclosure
7	10/26/16	Plaintiffs' Second Supplemental Expert Disclosures
8	11/9/16	Deposition of Plaintiff's Expert Stan Smith, Ph.D.
9	11/9/16	Plaintiffs' Sixth Supplement to FRCP 26.1 Disclosure
10	11/15/16	Plaintiff's Third Supplemental Expert Disclosures
11	12/9/16	Defendant's Seventh Supplement to FRCP 26.1 Disclosures
12	4/18/17	Plaintiff's Seventh Supplement to FRCP 26.1 Disclosures
13	5/5/17	Defendant's Eighth Supplement to FRCP 26.1 Disclosures
14	5/5/17	Plaintiff's Fourth Supplemental Expert Disclosures
15	5/5/17	Plaintiff's Eighth Supplement to FRCP 26.1 Disclosures
16	5/10/17	Plaintiff's Ninth Supplement to FRCP 26.1 Disclosures
17	7/13/17	Plaintiff's Fifth Supplemental Expert Disclosures
18	10/17/17	Plaintiff's Tenth Supplement to FRCP 26.1 Disclosures
19	11/8/17	Plaintiff's Eleventh Supplement to FRCP 26.1 Disclosures
20	11/27/17	Plaintiff's Twelfth Supplement to FRCP 26.1 Disclosures
21	12/11/17	Defendant's Third Supplemental Designation of Expert Witnesses
22	1/12/18	Plaintiff's Thirteenth Supplement to FRCP 26.1 Disclosures
23	1/16/18	Defendant's Ninth Supplement to FRCP 26.1 Disclosures
24	1/16/18	Plaintiff's Fourteenth Supplement to FRCP 26.1 Disclosures
25	1/26/18	Plaintiffs' Initial Expert Disclosures
26	1/26/18	Defendants Fourth Supplemental Designation of Expert Witnesses
27	1/26/18	Defendants Second Set of Interrogatories to Plaintiff
28	2/7/18	Plaintiffs Third Set of Request for Production of Documents to Defendants
	2/23/18	Plaintiffs' Rebuttal Expert Disclosures
	2/23/18	Defendants Fifth Supplemental Designation of Expert Witnesses
	2/28/18	Plaintiff's Responses to Defendant's Second Set of Interrogatories

B. SPECIFIC DESCRIPTION OF THE DISCOVERY THAT REMAINS TO BE COMPLETED

1. Destructive Testing of the Subject Fire Hydrant;
2. Deposition of Defendants' Experts Kerry Knapp and Carol Hyland and follow up deposition of David Komm;
3. Deposition of any expert involved in upcoming inspection of fire hydrant and any subsequent non-destructive testing;
4. Deposition(s) of Plaintiffs' Experts Winthrop Smith and follow up for Marietta

1 Nelson, M.D.;

2 5. Subpoena of most recent employment records for Plaintiff since right eye enucleation
3 surgery and subpoena of most recent inspection reports on fire hydrant in light of upcoming
4 inspection Plaintiff's counsel is proposing.

5 **C. REASONS WHY THE DISCOVERY REMAINING WAS NOT COMPLETED**
6 **WITHIN THE DEADLINES CONTAINED IN THE AMENDED DISCOVERY**
7 **SCHEDULING ORDER**

8 On July 31, 2017 the parties agreed to extend all the discovery deadlines due to the fact
9 Plaintiff was undergoing additional medical care including surgery to remove his eye and replace it
10 with a prosthetic eye. This Court granted that extension. As a result, the Defendants disclosed two
11 new experts, including a biomechanical engineer and a lifecare planner and Plaintiffs disclosed one
12 additional rebuttal biomechanical engineer expert. Currently, an Inspection and Destructive Testing
13 of the subject fire hydrant is scheduled for March 23, 2018, however the parties have agreed to
14 reschedule it to accommodate Defendant's expert. Lastly, Plaintiff has requested depositions of
15 Defendant's expert Kerry Knapp however is unable to proceed with the deposition before the current
16 deadline of March 28, 2018. Also, additional records from Plaintiff's employer and any inspections
17 of the fire hydrant have been requested. Defendant would also like to take the deposition of
18 Plaintiff's expert Winthrop Smith as well as a follow up deposition of ophthalmologist Nelson.

19 In light of foregoing and to allow the parties to complete the inspection and remaining
20 depositions the parties agree that a 90 day extension should be sufficient.

21 **D. PROPOSED SCHEDULE FOR COMPLETING ALL REMAINING DISCOVERY.**

22 Per Local Rule 26-4(d) we propose the following schedule:

- 23 1. **Discovery Cut-Off Date:** The last day to conduct discovery shall be **June 29, 2018.**
- 24 2. **Dispositive Motions:** The date for filing dispositive motions shall extended for thirty
25 days until **July 27, 2018**, 30 days after the proposed amended discovery cut-off date. In the event
26 that the discovery period is again extended from the discovery cut-off date set forth in this proposed
27 Discovery Plan and Scheduling Order, the date for filing dispositive motions shall be extended to be
28 not later than 30 days from the subsequent discovery cut-off date.

3. **Pretrial Order:** The date for filing the joint pretrial order shall not be later than **August 27, 2018**, 30 days after the cut-off date for filing dispositive motions. In the event that dispositive motions are filed, the date for filing the joint pretrial order shall be suspended until 30 days after decision on the dispositive motions or until further order of the court. In the further event that the discovery period is extended from the discovery cut-off date set forth in this Discovery Plan and Scheduling Order, the date for filing the joint pretrial order shall be extended in accordance with the time periods set forth in this paragraph.

4. **Fed.R.Civ.P. 26(a)(3) Disclosures:** The disclosures required by Fed.R.Civ.P. 26(a)(3), and any objections thereto, shall be included in the joint pretrial order.

5. **Extensions or Modifications of the Discovery Plan and Scheduling Order:** Any stipulation or motion must be made no later than 21 days before the subject deadline. Requests to extend discovery deadlines must comply fully with LR 26-4.

DATED this 20th day of March, 2018

DATED this 20th day of March, 2018.

SHOOK & STONE, CHTD.

STEPHENSON & DICKINSON, P.C.

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ORDER

It is so ordered.

DATED this 21st day of March, 2018.


U.S. MAGISTRATE JUDGE